

**BEFORE THE  
NATURAL RESOURCES COMMISSION  
OF THE  
STATE OF INDIANA**

**IN THE MATTER OF:**

<b>AMENDMENTS TO FISH AND WILDLIFE RULES</b>	)	<b>Administrative Cause</b>
<b>ADDRESSING HUNTING, TRAPPING, OR OTHER</b>	)	<b>Number 14-095D</b>
<b>TAKING OF VARIOUS MAMMALS;</b>	)	
<b>THE COLLECTION, POSSESSION, SALE AND</b>	)	<b>(LSA Document #14-453(F))</b>
<b>TRANSPORTATION OF REPTILES AND</b>	)	
<b>AMPHIBIANS; THE HUNTING OR TAKING OF</b>	)	
<b>BIRDS; SPORT AND COMMERCIAL FISHING</b>	)	
<b>ALONG WITH OTHER RELATED AMENDMENTS</b>	)	

**REPORT ON RULE PROCESSING, CONSIDERATION OF PUBLIC COMMENTS,  
ANALYSIS AND RECOMMENDATION REGARDING FINAL ADOPTION**

**1. RULE PROCESSING**

The rule amendment proposal ("*Proposal*") presented for consideration involves numerous rules related to the taking of wild animals.

Included within the Proposal are amendments to the definitions of "crossbow" and "possession" found at 312 IAC 9-1-5.3 and 312 IAC 9-1-12, respectively.

The Proposal also contains an amendment to 312 IAC 9-4-10 that will close the season for taking ruffed grouse; as well as amendments to 312 IAC 9-4-8 and 312 IAC 9-4-9 that will impact the taking of ring-necked pheasant and bobwhite quail, respectively, on Department of Natural Resources ("*Department*") properties. Additionally, the Proposal provides for amendments to 312 IAC 9-4-11 associated with the hunting season for wild turkeys in seven counties, requiring the wearing of hunter orange while hunting wild turkeys during the overlapping deer muzzleloader and special late antlerless seasons and amending requirements associated with checking in a taken wild turkey.

With respect to white-tailed deer, the Proposal offers amendments to 312 IAC 9-3-2, 312 IAC 9-3-3 and 312 IAC 9-3-4. At 312 IAC 9-3-2 an amendment to the requirements for checking in a

harvested deer is proposed. The equipment for hunting white-tailed deer is proposed for expansion through amendments to 312 IAC 9-3-3 to allow use of the 28 gauge shotguns and rifles firing cartridges with non full metal jacketed bullets not less than .243 caliber, with no maximum limitation. The “urban deer season” is being renamed the “deer reduction season” through amendments to 312 IAC 9-3-4 that will also eliminate the existing list of urban deer zones in favor of allowing the Director of the Department of Natural Resources to establish deer reduction zones through a temporary rule adopted on an annual basis. Contemporaneous, technical and corrective amendments exist in each of these three rules.

Other amendments in the Proposal associated with mammals include those at 312 IAC 9-3-12, 312 IAC 9-3-15, 312 IAC 9-3-16 and 312 IAC 9-3-18.6. At 312 IAC 9-3-12 the amendment offered will eliminate the need for a landowner to provide *written* designation of another person who may take coyotes on the landowner’s land. A number of amendments are offered at 312 IAC 9-3-15 addressing a landowner’s or tenant’s ability to grant permission to another person to take specified species of wild animal that are damaging property or posing a health or safety hazard without compensation. The hours for hunting cottontail rabbits on Department of Natural Resources’ fish and wildlife areas, Salamonie Lake, Mississinewa Lake, and Patoka Lake will be restricted during the month of February through the amendment to 312 IAC 9-3-16. The amendments to 312 IAC 9-3-18.6 will delete the identification “wild hog” in favor of the identification “wild pig,” will add a list of swine that are not included within the identification of “wild pig”, and will prohibit the use of dogs in hunting wild pigs.

With respect to reptiles and amphibians the Proposal includes amendment of 312 IAC 9-5-6 to reduce the bag limit for, establish a size limit for and establish a season for taking turtles. Also offered for amendment is 312 IAC 9-5-6 to allow the taking of frogs by use of an air rifle meeting certain specifications and a prohibition on the taking of frogs on a state park by use of an air rifle or .22 caliber rifle. At 312 IAC 9-5-7 the term “reptile or amphibian that is native to Indiana” will be amended to include first generation hybrids.

The Proposal also includes numerous amendments relating to sport and commercial fishing. A number of definitions would be amended at 312 IAC 9-6-1 and amendments of a more technical

or corrective nature are offered at 312 IAC 9-7-1, 312 IAC 9-8-4 and 312 IAC 9-8-5. Three additional species of fish will be identified as “exotic fish” through amendments to 312 IAC 9-6-7, and the means by which those fish are to be dispatched will also be clarified. The Hoosier cavefish will be identified as an endangered fish through amendments proposed at 312 IAC 9-6-9. The Proposal includes amendments at 312 IAC 9-7-2 regarding equipment allowed for sport fishing (except on the Ohio River) and the identification of equipment using a Department issued customer identification number. The size limit for Muskellunge and Tiger Muskellunge will be increased from 36 inches to 44 inches on three lakes through an amendment to 312 IAC 9-7-4 while the size limit for black bass will be reduced from 15 inches to 14 inches on Dogwood Lake and the bag and size limit for black bass taken from Kunkel Lake in Wells County will be revised by amendments to 312 IAC 9-7-6. A nine inch size limit would be established for Crappie taken from Dogwood Lake in Daviess County and Hardy Lake in Scott County through amendments to 312 IAC 9-7-9 and size limits for the taking of Walleye and Sauger will be revised by amendments to 312 IAC 9-7-12. Through amendments to 312 IAC 9-7-10 and 312 IAC 9-7-14 a bag limit of 25 fish per day per person will be set for any combination of Sunfish, including Bluegill.

Additional miscellaneous amendments eliminate the need to record the hunter education program completion date on hunting licenses, address the placement of traps capable of taking migratory birds, at 312 IAC 9-12-4 and 312 IAC 9-2-4, respectively. The Proposal will also result in the repeal of four administrative rules, 312 IAC 9-1-19, 312 IAC 9-2-1, 312 IAC 9-2-5 and 312 IAC 9-5-10.

The proposed amendment to 312 IAC 9-3-3(d)(4) that would allow for hunting white-tailed deer with a rifle firing a cartridge with “a bullet of two hundred forty-three hundredths (.243) of an inch diameter or larger”, that has “a minimum case length of one and one-sixteen hundredths (1.16) inches” and that eliminates the existing maximum case length resulted from petitions for rule change submitted by three citizens to the Natural Resources Commission (“*Commission*”) in accordance with Information Bulletin #7 (Third Amendment), *Petitions for Rule Change and for Nonrule Policy Document Change*, posted at <http://www.in.gov/legislative/iac/20111005-IR-312110580NRA.xml.pdf> (“*Information Bulletin 7*”). Jeff Clark, II of Bremen, Indiana filed two

citizen petitions in May 2012 and November 2012 and a third citizen petition was filed jointly by Drew Price and Eddy Walter in March 2013.<sup>1</sup>

Mr. Clark stated in his May 2012 petition, "I would like to petition the Indiana DNR for the inclusion of a small caliber rifle for deer hunting in our state. Specifically the .243 Winchester or the ever increasingly popular .223 Winchester. Also, I would recommend that it be limited to private property, to bolt guns only and to property of ten acres or more." Mr. Clark reaffirmed his request in November 2012 requesting additionally that the .308 Winchester, .270 Winchester, 7.62x39, the .30-30, the .45-70 or the 7.62x54 be allowed but again confining his request to include the use of only bolt action rifles on property consisting of ten acres or more. The citizen petition filed by Mr. Price and Mr. Walter in March 2013 sought to "increase the maximum case length from 1.8 inches to 2.250 inches" adding that "by increasing the cartridge case length allows Indiana deer hunters to use straight-walled calibers, .444 Marlin (2.250") and .45-70 Government (2.105"). Mr. Price and Mr. Walters characterized their request as "[remaining] in the Department's spirit of a mid-range firearm."

Upon consideration by a committee established by the Department of Natural Resources ("*Department*") and as part of the Division of Fish and Wildlife's ("*DFW*") biennial review the Department concluded, and recommended to the Commission on September 16, 2014, as follows:

The Indiana DNR has proposed rule language that will add additional rifle cartridges, including the .243, 308, 7.62 x 39, .30-30, .45-70, and 7.62 x 54. The proposed changes will allow the bullet size to be a minimum of .243 and will eliminate the maximum cartridge case length (see 312 IAC 9-3-3(d)). By allowing these additional cartridges, high-powered rifles will be legal during the deer firearms seasons. The DNR believes this change can be made at this time for the following reasons:

- There are currently no limits on rifles that are legal to use for species other than migratory birds, deer, and wild turkey.
- Muzzleloaders have evolved to the point that with smokeless powder (which is legal to use), they are essentially a high-powered rifle (accurate 500 yard gun).

---

<sup>1</sup> Mr. Clark filed two separate Petitions for Rule Change that were captioned *FW: Rifle Calibers for Deer Hunting*, Administrative Cause Number 12-100D and *FW: Rifle Caliber Petition*, Administrative Cause 12-202D. Mr. Price and Mr. Walter filed a joint Petition for Rule Change that was captioned *FW: Price & Walter Deer Hunting Rifle*, Administrative Cause Number 13-052D.

- They are legal in several nearby states, including Kentucky, Michigan (the northern part of the state), and Pennsylvania.
- There has not been an increase in hunting-related accidents as the result of the use of rifles, both in Indiana and in several other states where they are allowed.
- There isn't a need to limit the equipment that can be used to take deer in order to manage the deer herd. The deer harvest was a record in 2012, and the DNR is managing the deer herd through other means.
- Rifle cartridges that fire a bullet at least .243 in diameter and have a minimum case length of 1.16 inches long can safely and humanely kill white-tailed deer.

*Citizen Petition Reports, pgs. 1-2, submitted to the Natural Resources Commission on September 16, 2014.*

Executive Order 13-03 requires agencies to “suspend rulemaking action on any proposed rules for which a notice of intent to adopt a rule...was not submitted to the office of the *Indiana Register* on or before January 14, 2013.” Additional compliance provisions were included in Financial Management Circular 2013-01. Joseph Hoage, General Counsel for the Department, submitted to Christopher D. Atkins (“*Atkins*”), the Director of the Office of Management and Budget (“*OMB*”) a request for an exception to the suspension of rulemaking action under the provisions of Executive Order 13-03. In a letter dated June 27, 2014, Atkins responded, “Based on the [Department’s] submission, [Department’s] request qualifies for an exception under Section 6(b) and (g) of Executive Order 13-03. Therefore, DNR may proceed with the rule as proposed in its June 25, 2014 submission.”

DFW staff offered the proposed rule for preliminary adoption by the Commission at its regular meeting held on September 16, 2014. During the Commission’s consideration it received oral comment regarding the closure of the ruffed grouse season (*312 IAC 9-4-10*) as well as the expanded use of rifles for hunting white-tailed deer (*312 IAC 9-3-3(d)(4)*). The Commission Chair also distributed to the Commission membership written comments about the proposal. The written comments received during the September 16, 2014 meeting of the Commission have been attached and are incorporated by reference at Exhibit B3. The proposed rule was granted preliminary adoption by the Commission on September 16, 2014.

The “Notice of Intent” to adopt the proposed rule amendments was posted to the *Indiana Register* database website as 20141105-IR-312140451NIA on November 5, 2014. The notice identified Linnea Petercheff, Staff Specialist with the DFW, as the “small business regulatory coordinator” for purposes of Indiana Code § 4-22-2-28.1.

The Commission caused the information required by I.C. 4-22-2-22.5 to be included within the rulemaking docket maintained on its Internet website. The rulemaking docket has been updated periodically throughout the rule adoption process.

Following the posting of the Notice of Intent, fiscal analyses of the rule proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent, to the OMB on November 5, 2014 as specified by Executive Order 2-89 and Financial Management Circular 2010-4. The material was also submitted to George Angelone, Counsel for the Legislative Council, on November 5, 2014.<sup>2</sup> In a letter dated January 8, 2015, Brian E. Bailey, Director, OMB, recommended that the proposed rule amendments be approved.

The Commission’s Division of Hearings submitted the rule proposal to the Legislative Services Agency (“LSA”) along with the “Statement Concerning Rules Affecting Small Business” (also known as the “Economic Impact Statement”) on February 6, 2015. The Notice of Public Hearing was submitted to LSA on February 10, 2015. The Notice of Public Hearing was posted to the *Indiana Register* database website on February 18, 2015 as 20150218-IR-312140453PHA along with the Economic Impact Statement (20150218-IR-312140453EIA) and the text of the proposed rule (20150218-IR-312140453PRA). Following receipt of an “Authorization to Proceed” from LSA on February 10, 2015, the Commission’s Division of Hearings also caused a Notice of Public Hearing to be published by the Indianapolis Newspapers, which publishes a newspaper of general circulation in Marion County, Indiana, on February 18, 2015. In addition, notice of the public hearing and a summary of the proposed rule changes were published on the Commission’s web-based electronic calendar.

---

<sup>2</sup> It was determined that the copy of the proposed rule language submitted to OMB and the Legislative Council contained clerical errors and a new copy was substituted on November 6, 2014.

As required by I.C. 4-22-2.1-5(c)(2), the proposed rule amendments and Economic Impact Statement were also submitted to the Office of Small Business and Entrepreneurship (“OSBE”) on February 11, 2015. In a letter dated February 12, 2015, Erik Scheub, Small Business Ombudsman, stated that “OSBE does not object to the economic impact to small business associated with the proposed rule.”

## **2. REPORT OF PUBLIC HEARING AND COMMENTS**

### **a) Public Hearing Comments**

Three public hearings were conducted. The first public hearing was conducted on March 16, 2015 at the Spring Mill State Park Inn in Mitchell, Indiana with approximately 57 members of the public attending. Approximately 24 members of the public attended the second public hearing held on March 17, 2015 at the Garrison located at Fort Harrison State Park in Indianapolis, Indiana. The third and final public hearing was conducted at the Department’s Northeast Regional Headquarters in Columbia City, Indiana with approximately 115 members of the public in attendance. Sandra Jensen served as the hearing officer. A variety of staff members from the Department’s DFW and Division of Law Enforcement also participated in the public hearings.

A summary of the oral comments received at the public hearings has been attached and incorporated by reference at Exhibit A. Certain individuals attending the public hearing also provided written comments, which have been reproduced, attached and incorporated as part of Exhibit B1.

### **b) Comments Received Outside Public Hearing**

An opportunity was provided for members of the public to submit written comments by regular U.S. mail from approximately September 2014 until the comment period closed at midnight on March 25, 2015. These comments have been attached and incorporated by reference at Exhibit B1. Written comments were also accepted from the public through the Commission’s web based comment form from near November 5, 2015 until the close of the comment period on March 25, 2015. Comments received through the web based form have also been attached and incorporated by reference at Exhibit B2.

**c) Response by the Department of Natural Resources**

On April 20, 2015, the Commission received the “Division of Fish and Wildlife Response” (*“DFW Response”*) to the public comments received. The DFW Response is attached and incorporated by reference at Exhibit C.

In support of the approval of certain rule amendments as proposed, the DFW Response offers additional explanation pertaining to the following topics.

- The need to accurately reflect the statutory authority associated with lifetime hunting and fishing licenses.
- Fiscal responsibility and improved enforcement capabilities associated with the use of electronic harvest data systems by check station operators.
- Enhancing flexibility to more appropriately manage deer populations through the restructuring of the “urban deer zone” into “deer reduction zones”.
- The ability of landowners to authorize a friend, relative or other individual to take nuisance wild animals.
- The establishment of hunting hours for cottontail rabbits on Department properties in the month of February.
- The prohibition on the use of dogs to take wild pigs.
- The closure of the hunting season for ruffed grouse.
- The establishment of a season, bag limit and size limit for taking turtles.
- The increased size limit for Muskellunge and Tiger Muskellunge take from Lake Webster.

The DFW Response encourages the revision of the proposal to amend 312 IAC 9-7-12 to impose the new 16 inch size limit on Walleye, Sauger and Saugeye taken from the St. Joseph River and the Elkhart River in St. Joseph and Elkhart Counties.

Finally, the DFW Response seeks to have three of the proposed rule amendments withdrawn. The rule amendment proposals the DFW seeks to have withdrawn include the proposal to establish a bag limit of 25 per day per person on Sunfish, including Bluegill (312 IAC 9-7-10),



the proposal to eliminate the need for a landowner to provide *written* permission to another person to take coyotes on that land (312 IAC 9-3-12), and the proposal that would authorize the use of an expanded range of center-fire rifles for hunting deer (312 IAC 9-3-3).

### 3. ANALYSIS AND RECOMMENDATION

The proposals to amend 312 IAC 9-1-12 (definition of “possession”); 312 IAC 9-2-4 (pertaining to the setting traps and nets); 312 IAC 9-3-16 (hunting cottontail rabbits)<sup>3</sup> and 312 IAC 9-3-9 (addressing the disposition of wild animals found dead) received little, if any public input. Similarly, there was little public input regarding the proposed rule amendments associated with the sale and transport of reptiles and amphibians (312 IAC 9-5-7); exotic fish (312 IAC 9-6-7); endangered fish (312 IAC 9-6-9) and black bass (312 IAC 9-7-6). The majority of the proposed amendments associated with rules of general application to sport and commercial fishing, including those at 312 IAC 9-6-1, 312 IAC 9-7-1, 312 IAC 9-7-2, and 312 IAC 9-8-4 and 312 IAC 9-8-5, were also not of significant interest to the public.

With respect to the proposal to amend the definition of “crossbow” at 312 IAC 9-1-5.3 there were few public comments received. One comment suggested that the definition be further amended to include proper terminology by deleting the word “arrow” and replacing it with “bolt”, which the commenter stated is the more appropriate name for a crossbow’s projectile.<sup>4</sup> The DFW Response does not address this issue; however the hearing officer has confirmed with DFW staff that the term “bolt” is the more appropriate name for a crossbow projectile.

Certain individuals holding licenses to provide nuisance wild animal control assistance to the public expressed objection to the amendments proposed at 312 IAC 9-3-15 that would allow a landowner or tenant to use the services of an unlicensed individual to take a nuisance wild animal as long as the individual did not charge a fee for the service. The commenters expressed the opinion that this alternative is not only destructive to their small businesses it creates “basically an open trapping season.” The commenters further explained that licensed nuisance wild animal control operators are required to undergo continuing education and are under legal

<sup>3</sup> There were comments received that offered opinions about the rabbit season and the need to protect sustainable populations of rabbits, but the rule amendment at issue here does not propose to alter the existing rabbit season.

<sup>4</sup> Jameson Olson, December 4, 2014.

obligation to properly dispatch or relocate nuisance wild animals, while under this rule as proposed for amendment the Department is encouraging the illegal dumping of these animals “out in the country” by individuals who are not trained or under any requirement to humanely dispatch these animals. Clearly, this rule amendment may have some impact on the business of licensed wild animal control operators. However, the existing language of 312 IAC 9-3-15(b) through (d) prohibits a person taking a nuisance wild animal from earning any profit for providing the service or from any animal taken and additionally mandates the manner in which any taken nuisance wild animal must be handled, whether the animal is euthanized or released. In light of the existing restrictions imposed by 312 IAC 9-3-15 it is reasonably unlikely that anyone would view this amendment as creating an “open trapping season.” The DFW Response does not directly address the concerns raised in the public comments but, instead, emphasizes the importance of allowing landowners and tenants the authority to eliminate a wild animal causing or threatening damage or posing a health or safety threat in a timely and cost effective manner.

The predominant interest of individuals offering comments to the amendments proposed at 312 IAC 9-3-18.6 is the prohibition on the taking or chasing of a wild pig using dogs. A few individuals supported the proposal to prohibit the use of dogs in chasing and taking wild pigs for the reason that this action will “remove incentives associated with a wild pig presence on the landscape and strengthen enforcement efforts related to criminal wild pig possession and release.” However, a number of individuals commented in opposition to an amendment prohibiting the aid of dogs in hunting wild pigs, offering the belief that wild pigs need to be eradicated by any means possible before they become a larger problem in Indiana. The DFW Response emphasizes the ability to take wild pigs at any time of year to assist in the elimination of the non-native species. However, the DFW Response notes that the use of dogs to hunt wild pigs actually pushes the wild pigs into new territory and by prohibiting the chasing of the pigs by dogs it is intended to decrease the spread of wild pigs into new geographical areas of the State. The DFW also notes that the use of dogs to take wild pigs is prohibited in Illinois, Tennessee and Kansas.

In large part, the comments received supported the elimination of the hunting season for ruffed grouse through the amendment proposed at 312 IAC 9-4-10. Many of the individuals

commenting expressed a desire for the Department to take a more active role in the restoration of habitat necessary for the continued existence of these birds. A few individuals recommended that private landowners be allowed to hunt ruffed grouse on their private property as an incentive to increase habitat for the birds. The DFW concluded that it “cannot support a season for ruffed grouse when the grouse population is projected to drop below ‘viable population levels’ with the next couple of years in portions of its existing range in south central Indiana.”<sup>5</sup> The DFW Response provides statistical data in support of the position that through its authority and obligation to “manage, conserve, and protect wild animal populations for present and future generations” the closure of the ruffed grouse season is necessary to prevent the extirpation of the species from the State of Indiana.

Certain individuals expressed the opinion that the bag limits for ring-necked pheasant and northern bobwhite quail need to be reduced or the seasons shortened before these bird populations are seriously depleted in a manner similar to the ruffed grouse. The amendments proposed with respect to 312 IAC 9-4-8 and 312 IAC 9-4-9, relating to ring-necked pheasant and northern bobwhite quail, respectively, provide additional limitations and restrictions on taking these game birds on certain Department properties but do not alter the existing bag limits or seasons as suggested by individuals who offered public comments. The DFW Response does not address these recommendations from the public; however, these revisions were not contemplated in the Proposal’s original language.

The comments offered with respect to the proposal to extend the turkey season for seven Indiana counties through an amendment at 312 IAC 9-4-11 appears to have met with unanimous support from the few individuals who offered comments on this topic.

A minimal number of comments were received regarding amendment proposals at 312 IAC 9-5-6 involving the taking of turtles and frogs. The ability to take frogs using air rifles received almost universal support while public sentiment associated with establishing a season for taking turtles along with establishing a bag limit and size limit for turtles is more varied. Many individuals offered comments supportive of the proposed rule amendment while a few expressed

---

<sup>5</sup> DFW Response, pg. 3.

concern that the established turtle size limit was too small and that the reduction in the number of turtles that may be taken per day from 25 to 4 is overly restrictive. The DFW Response reflects that turtle populations are “under pressure worldwide” noting that numerous turtle species are currently threatened and eight species are extirpated worldwide. The DFW acknowledges that commercial sale of turtles is already prohibited by 312 IAC 9-5-7, but the DFW Response adds that with Asian turtle species suffering from overharvest, turtles are increasingly being harvested for export to supply those Asian markets. The Department concludes that the proposed amendments are necessary to the appropriate management and conservation of Indiana’s turtle species.

The overwhelming majority of comments support the amendment that will impose a nine inch limit on Crappie taken from Dogwood Lake and Hardy Lake and the increased size limit for Muskellunge and Tiger Muskellunge taken from Lake Webster, Backwater Lake and Kiser Lake. There was, however, stated opposition to the size increase associated with the Muskellunge and Tiger Muskellunge, predominantly from individuals who believe the species, which is maintained by stocking to create “trophy” fishing opportunities, is detrimental to native species of fish. Some of these individuals added the recommendation that Muskellunge and Tiger Muskellunge be eliminated from Indiana’s waters. The DFW recognized that Muskellunge and Tiger Muskellunge are sustainable only through stocking but maintain that the species is not harmful to other species in the affected lakes. The DFW added that catch rates sharply declined in spring 2015 at Webster Lake and that fewer young fish are surviving. The DFW suggests that an increase in the size limit may alleviate the drop in population thereby sustaining Muske fishing in Indiana.

With respect to the proposed rule amendments to 312 IAC 9-7-12 affecting Walleye, many individuals offered disfavor for an increase in the minimum size from 14 inches to 16 inches. Other individuals commented in support of the proposal but some of those who support the proposed amendment expressed confusion that the proposed amendment would allow 15 inch and larger Walleye to be taken from the St. Joseph and Elkhart Rivers, which are also located north of State Road 26 while allowing only 16 inch or larger Walleye to be taken from other

river segments located north of State Road 26.<sup>6</sup> The DFW Response expresses concurrence with the public comments and seeks to revise the proposed rule amendment to impose the new 16 inch limit on Walleye taken from all locations north of State Road 26, including the St. Joseph and the Elkhart Rivers in St. Joseph and Elkhart Counties. The only exception would be Lake George in Steuben County, from which a 15 inch Walleye may be taken.

The revision to 312 IAC 9-7-12, as sought by the Department, will cause the rule section to read as follows:

(c) An individual must not take or possess a walleye from ~~the St. Joseph River in St. Joseph County or Elkhart County or from the Elkhart River from its confluence with the St. Joseph River to the first dam in Elkhart County~~ **Lake George in Stueben County** unless the walleye is at least fifteen (15) inches long.<sup>7</sup>

With respect to the proposal to eliminate the need for landowners to provide written consent to other individuals to hunt coyotes on the landowner's property the public comments received were varied. Individuals who favored the proposal focused on the convenience of not having to obtain and maintain possession of a written letter of permission. However, other individuals expressed opposition to the proposed amendment citing that the lack of need to obtain and maintain possession of the written permission invites unauthorized individuals to trespass on private property to take coyotes. Even certain individuals who support the proposed amendment expressed concern regarding how a hunter would be able to prove they were hunting with the permission of the landowner unless written permission was provided by the landowner.

In any event the DFW determined that the proposed amendment to 312 IAC 9-3-12, which would eliminate the need for a landowner to provide written permission to another person to take coyotes on that landowner's property, would be contrary to Indiana Code § 14-22-6-12. Indiana Code § 14-22-6-12 states as follows:

Sec. 12. A person:

- (1) who possesses land; or
  - (2) designated in writing by a person who possesses land;
- may take coyotes on the land at any time.

<sup>6</sup> Bill LaVigne, March 22, 2015; Gary LaRue, March 23, 2015.

<sup>7</sup> This rule language appears slightly different than what is included on page 5 of the DFW Response. The version of the language included here is based upon the existing rule language while the DFW Response reflects the revision made to the rule language contained in the proposed rule as posted by LSA on February 18, 2015.

Any provision of an adopted administrative rule that is contrary to Indiana law is invalid. For this reason the DFW has recommended that this proposed rule amendment be withdrawn.

With respect to fishing, the public's interest focused most significantly upon the proposal to include Bluegill in the species of fish for which there exists a daily bag limit of 25 fish per day per person through amendments to 312 IAC 9-7-10 and 312 IAC 9-7-14. While a few individuals commented in favor of this rule amendment, most anglers expressed opposition. Many who commented in opposition to the rule proposal expressed interest in seeing the data upon which the DFW based its decision to include Bluegill in the bag limit. Some of the comments reflected upon historical studies that concluded a bag limit of this type would have no impact upon the resource and upon historic bag limits on Bluegill that were repealed following a determination that they proved unsuccessful. Still other individuals offered the observation that including Bluegill in the bag limit of 25 Sunfish would cause the shortening of family fishing vacations or further reduce the already dwindling number of people who engage in fishing. The DFW Response does not provide a response to the public's requests for information and data upon which the DFW believes inclusion of Bluegill in the bag limit on sunfish is appropriate. However, the Department recognized in the DFW Response that the present possession limit (defined at 312 IAC 9-2-8) would allow the possession of only two times the daily bag limit unless any number of fish over that possession limit had been processed and stored at a permanent residence. The DFW Response further acknowledged that the inclusion of Bluegill in the daily bag limit of 25 Sunfish per day per person, when combined with the impact of the existing possession limit could have the effect of limiting a vacationer to taking 50 Bluegill for the duration of the vacation. The DFW determined, "Therefore, because of the economic impact, the DFW is requesting not to give this rule change final adoption. The DFW plans to propose a similar change in the future with changes to the possession limit rule at the same time in order to address these concerns but still provide protection for the resource."

Overwhelmingly the interest in this Proposal has focused on the amendment offered at 312 IAC 9-3-3(d)(4). This amendment will allow an individual to hunt deer with any center-fire rifle firing cartridges having a minimum diameter of two hundred forty-three thousandths (.243) of an inch diameter and having a case length of at least one and sixteen-hundredths (1.16) inches. The

amendment would remove the maximum cartridge restrictions. The only restriction imposed by the amendment would prohibit the use of full metal jacketed bullets.

The differences of opinion about this rule amendment have been apparent since the Commission granted preliminary adoption to this Proposal in September 2014. Large numbers of individuals support the amendment while equally large numbers of individuals offer complete opposition to further expanding the use of center-fire rifles for hunting deer. Most of the individuals expressing these diametrically opposed viewpoints identify themselves as deer hunters and it has become apparent that this rule amendment has pitted hunter against hunter in terms of individual beliefs about the appropriateness of its adoption.

While individual comments elaborate upon certain points and offer explanation of their support for or opposition to the rule amendment proposal, the general essence of the public debate was clearly apparent on January 15, 2015 when the Natural Resources Advisory Council (*"Advisory Council"*) considered the public input received to date with respect to this rule amendment. Part of the Advisory Council's consideration included the receipt of statements from two members of the public; Bill Herring (*"Herring"*), who favors the proposal, and Doug Allman (*"Allman"*), who spoke in opposition to it. The content of Herring's statement was recorded in the minutes as follows:

As far as I can see, with the evolution of the firearms and the ammunition, Indiana has an admirable safety record. I think that would likely continue if the so called 'highpowered' rifle rule were adopted, because we already have high-powered handguns and highpowered muzzleloaders with rifled barrels. We have high-powered shotguns with rifled barrels.

*Natural Resources Advisory Council, Meeting Minutes, January 15, 2015, pg. 4.* Conversely, Allman's comments were documented as:

...the Department has adopted rules in the past that incorporate new firearm technology, such as smokeless powder muzzleloader, and 'it shoots a lot farther and I think that was a mistake. We haven't kept that in check.' ... 'We're really increasing the length that a bullet can travel...and we are a flat state. We're a state of population and we kill deer pretty fine with the weapons we have...I don't believe we need another tool to kill a deer...I think this is just a push to make things farther, farther. I mean, you see a deer 400 yards away, that wasn't a shot that you took in the past...The farther you get away, the more you have problems with the misidentification.' Allman said, 'I don't think it's necessary. I think it is really going to hurt with access. I think there will be things that will be shut off. I

think municipalities will react to it. I've talked to sheriffs. I've talked to Commissioners. They're not enthused about it.'

*Id.*

This report will surely not identify every point that was made by the multitude of individuals offering comments; however, in an effort to provide clarity it is important for some of the most commonly cited contentions to be highlighted and discussed briefly. The individuals who favor the expanded use of center-fire rifles for deer hunting accurately observe that any wild animal in Indiana except deer, wild turkey and migratory birds may be hunted with an unrestricted array of center-fire rifles. As is also accurately observed by these individuals, deer hunting routinely involves a hunter shooting from an elevated position towards the ground whereas coyote hunting typically involves shooting across a flat field. These individuals reasonably conclude that due to the manner in which deer and coyote are hunted, the likelihood of an errant bullet resulting from a center-fire rifle shot at a deer is less than what might be expected if the same weapon is fired at a coyote. Logically, this conclusion holds true with respect to hunting squirrels as well, in which case a hunter is most commonly shooting from the ground up into a tree.

Those individuals who oppose the amendment acknowledge that center-fire rifles are used to hunt smaller game in Indiana. However, these individuals note that the size of the game being hunted tends to regulate the size of the weapon used. They note that the size of a deer and the "take down" power necessary for harvesting a deer is far greater in comparison to what is necessary and appropriate for taking a wild animal the size of a coyote or squirrel. Therefore, these individuals reasonably conclude that the use of unrestricted center-fire rifles for taking deer lends itself to the use of a larger caliber center-fire rifle than what is typically used for taking smaller wild game. Furthermore, some of these individuals stated the belief that caliber restrictions should be considered with respect to the use of center-fire rifles used to hunt smaller game and that caliber restrictions should be instituted with respect to certain weaponry presently allowed for deer hunting. These individuals also correctly observe that there are far greater numbers of deer hunters than there are numbers of individuals hunting furbearers and small game.

Many of the individuals offering comments in favor of the rule amendment observed that large caliber rifle cartridges are currently legal for use in "handguns", such as the "Contender" pistols,



which are, because of their decreased barrel length, inherently less accurate. Individuals who support the adoption of this rule amendment also cite the fact that other weapons, such as the muzzleloading rifle using smokeless powder, possess muzzle velocities and trajectories similar to those exhibited by the larger caliber center-fire rifles. Comments received in opposition to the rule amendment counter this position by noting that use of muzzleloading rifles using smokeless powder is effectively restricted by the much higher cost to purchase the weapon. These individuals aptly note that if the rule amendment is adopted the overall affordability of many center-fire rifles will allow weapons with these higher muzzle velocities and longer trajectories to become the norm, instead of the rarity. Again, the discussion included the contention that a variety of weapons presently allowed for deer hunting should be subjected to restrictions.

Individuals offering comments in support of the rule amendment also offered the opinion that the lighter recoil associated with center-fire rifles will afford people interested in hunting deer, but who are uncomfortable with or unable to endure the recoil of many other types of firearms, the ability to deer hunt. These individuals believe that by adopting the rule amendment the result would be an increase in the number of hunters afield, an increase in license sales and a greater harvest. Conversely, there were many individuals who are sufficiently concerned for their own well-being, as well as the well-being of their children, that they will consider giving up deer hunting in Indiana entirely if the rule amendment is adopted. Other comments note that by allowing the use of unrestricted center-fire rifles for deer hunting, access to property for deer hunting will become ever more difficult to achieve and municipalities and other local units of government may impose greater restrictions upon deer hunting opportunity within their jurisdictions. Based upon these polarized comments it stands to reason that the positive impact, if any, that the rule amendment may have in bringing new hunters into the sport would be offset by the rule amendment pushing other hunters out of the sport, either voluntarily or through a loss of access. In that respect, it is reasonable to conclude that any overall positive impact would be negligible. With respect to increasing the annual deer harvest, a great number of comments received mostly from individuals in the northern part of the State, report that the Department's most recent aggressive efforts to decrease deer herds are "decimating" the herds. These commenters are seeking a transition away from the aggressive deer reduction efforts towards a

moderated effort to sustain healthy deer populations and for this reason oppose allowing additional equipment for taking deer.

Through the receipt of public comments it also became clear that other nearby states that allow hunting with larger caliber center-fire rifles either possess topographies generally different than the topography of Indiana or those states allow the use of the higher caliber weapons only in geographic areas where the topography is different than the topography of Indiana. This is particularly true for the northern portion of Indiana where the terrain is similar to the southern portion of Michigan, where hunting with center-fire rifles is not permitted. However, in the northern portion of Michigan, which is rugged, hilly, highly forested and lightly populated, more akin to some portions of southern Indiana, the larger caliber center fire rifles are allowed. Kentucky and Pennsylvania, which also boast more rugged and forested terrain and allow high caliber center fire rifles to be used are also significantly different than Indiana. Conversely, Illinois and Ohio, with terrain more similar to what is found overall in Indiana, do not allow deer hunting with center-fire rifles.

Whether in support of or opposed to the rule amendment, the majority of the individuals' comments focused upon the safety and well being of both the hunting community as well as the general public. Representatives of the law enforcement community offered that presently they are required to respond to reports of accidental shootings of houses, cars and outbuildings that occur during deer season, which are frequently confirmed to be related to deer hunting. These officers express concern that the approval of the proposed amendment will increase the number of those incidents. The officers confirmed that these incidental shootings are not captured under the heading of "hunting accidents", which records only those incidents involving hunters but not other types of damage resulting from hunting activities.

With safety in mind, it is noted that the original citizen petitions received by the Commission, did not seek unrestricted use of center-fire rifles for deer hunting. The petitions sought to have the use of center-fire rifles expanded in a limited way. It is further noted that many individuals offering comments expressed that need for any expansion in the use of center-fire rifles for hunting deer should be "reasonable." The petitions sought to use the higher caliber center-fire

rifles only in bolt-action rifles and only on parcels of property consisting of 10 acres or greater. Individuals expressed concern about unlimited magazine capacity which could be addressed by allowing only bolt-action weapons as requested in the original petitions or by including in the rule amendment a cartridge limit such as has been done for migratory bird hunting. Expanding the use of center-fire rifles while maintaining some form of maximum cartridge size was successfully accomplished in 2012 and continues to be an option that might partially allay concerns about the use of weapons such as the .50 caliber Barret-Browning or the .375 Allen. If considered appropriate certain comments reflect that geographical limits based on topography could also be included as well as restrictions based upon the size of the parcel of property being hunted.

Pat Early, the Chair of the Natural Resources Advisory Council stated, "Trying to have some kind of consensus is certainly important...You don't want people divided and fighting...Hopefully, the result of this process will be to come to a logical conclusion that is in the best interest of everybody involved and certainly in the best interest of the sportsmen."

*Natural Resources Advisory Council, Meeting Minutes, January 15, 2015, pg. 5.* Many individuals, whether supportive of the amendment or opposed to the amendment, indicated that certain restrictions would be acceptable or should be imposed. To achieve any form of consensus with respect to the further expansion on the use of center-fire rifles for deer hunting, it appears that much more consideration must be given to the various restrictive measures that were suggested by the petitioners and the public. The public sentiment expressed on this rule amendment highlights the validity of the impressions expressed and the questions asked by AmyMarie Travis Lucas, Vice-Chair of the Natural Resources Advisory Council, on January 5, 2015, which were memorialized as follows:

AmyMarie Travis Lucas asked the Division of Fish and Wildlife staff to provide equipment capability information, such as feet/second muzzle velocity and distance travelled of a projectile for the types of equipment currently allowed for use during the firearms season. Travis Lucas noted that as a prosecuting attorney she uses this type of data every day in making decisions. "I deal with issues of where bullets travelled and whether someone made a shot intentionally or unintentionally." She said that there is not a lot of scientific information regarding what Indiana allows currently and what is proposed. "Everyone keeps saying, 'Oh, these projectiles travel much farther,' but I would like to know that for sure scientifically." Travis Lucas asked whether the Division of Law Enforcement had

an opinion of the proposed rule as to enforceability. "We put our conservation officers on the frontline to deal with whatever we decide to do...I always like to hear from them about how they feel this change would affect them positively, negatively." She also asked for information regarding how other states' conservation officers deal with equipment allowed in their states similar to the equipment in the proposed rule. Travis Lucas said she was also interested in scientific opinion regarding the capacity of magazines that would be allowed for the proposed equipment. "Is this something where...we have a concern maybe of somebody...trying to take five, six, seven shots at a deer that they are not hitting? That concerns me."

Travis Lucas reflected that she studied this issue in preparation for today's meeting. She said the states that allow the use of the types of equipment proposed allow the use in areas that are "extremely hilly, cliffs, ravines verging on almost mini-mountains," but do not allow the use of those types of equipment in flat areas. Travis Lucas said that the topography from Indianapolis and north is similar to southern Michigan and southern Wisconsin where the use of the proposed equipment is prohibited. She noted that the Department, Advisory Council and the Commission spend a lot of time dealing with the public opinion issues on hunting. She noted that those involved in hunting "try to do a lot of things to improve public opinion," but "are we creating a situation where we are potentially going to have more and more people take shots that they just shouldn't be taking?"

*Natural Resources Advisory Council, Meeting Minutes, January 15, 2015, pg. 6.*

Based upon the vast array of comments received from the public, which this report attempts to concisely but thoroughly discuss, the Department, through the DFW Response, reported:

The DFW surmised from all of the comments that while many people are interested in using these center-fire rifles, we found out that many people are not interested and strongly oppose their use. Therefore, the DFW does not recommend approval of this proposed change.

*DFW Response, pg. 2.*

The Proposal is presented to the Commission for action on final adoption, which is appropriate at this time.

The Department seeks to revise the proposed amendment to 312 IAC 9-7-12 for the purpose of reducing confusion and enhancing enforceability. The revision of this proposed amendment is supported by written comment and is, in the opinion of the hearing officer, consistent with the rule as originally proposed.

The Department also seeks to withdraw three of the rule amendments as follows.

1. Amendments that would authorize the expanded use of center-fire rifles for deer hunting, which involves the removal of amendments proposed at 312 IAC 9-3-3(d)(4).
2. Amendments that would eliminate the need for a landowner's permission to be in writing for another person to take coyotes on the landowner's land, which involves the removal of the amendments proposed at 312 IAC 9-3-12.
3. Amendments that would include Bluegill within the species of fish subject to a 25 fish per day per person bag limit, which involves the removal of amendments proposed at 312 IAC 9-7-10 and the revision of amendments proposed at 312 IAC 9-7-14.

The hearing officer supports the necessary withdrawal of the amendments to 312 IAC 9-3-12 as the amendment would be contrary to the statutory authority found at I.C. 14-22-6-12.

In light of unexpected economic impacts associated with including Bluegill within the species of fish for which there is a bag limit of 25 fish per day per person, the withdrawal of this proposal also appears reasonable and appropriate in light of the Department's opinion that a delay in action associated with the withdrawal of this rule amendment will not impact the resource.

The input received from the public associated with the proposal to expand the use of center-fire rifles for hunting deer raise several safety concerns and contemporaneously provide numerous potential alternatives that might make the expanded use of center-fire rifles for deer hunting more palatable for some of the public who presently oppose the rule amendment. Time constraints statutorily imposed upon rulemaking process is not, in the opinion of the hearing officer, amenable to the careful consideration and diligent deliberation deserving of the potential alternatives suggested by the public. Therefore, any adequate revision of the rule amendment would prove to be tedious, if not impossible. Under these circumstances, the hearing officer would concur with the Department's request that the amendment to 312 IAC 9-3-3(d)(4) be withdrawn.

The hearing officer recommends final adoption of the Proposal as revised to withdraw the amendments to 312 IAC 9-3-3(d)(4), 312 IAC 9-3-12, 312 IAC 9-7-10 and to revise the

amendments to 312 IAC 9-7-14 and 312 IAC 9-7-12 as discussed herein. The rule language, attached and incorporated by reference at Exhibit D, reflects the withdrawals and revisions as recommended for final adoption.

Dated: May 6, 2015

---

Sandra L. Jensen  
Hearing Officer